



David B. Cohen  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date:	March 22, 2004
ZAP Action Date:	May 10, 2004
Board of Aldermen Action Date:	May 17, 2004
90-Day Expiration Date:	June 10, 2004

TO: Board of Aldermen  
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development  
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: Petition # 225-01(3) of ZONING AND PLANNING COMMITTEE proposing a new section of Chapter 30 of the City of Newton Zoning Ordinances governing rear lot subdivisions that would require explicit findings of specific public benefits and standards for mitigation of impacts that must be met before a special permit for this purpose could be granted.

Petition #542-03 of ALD. LIPSITT requesting amendment to Chapter 30 of the City of Newton Zoning Ordinances to allow "rear lot subdivisions" by Special Permit only in cases where a) an as-of-right subdivision plan exists as an alternative, or b) one or more units of affordable housing will be provided.

CC: Mayor David B. Cohen  
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

***RECOMMENDATION: Petition #225-01(3) – Modify and approve suggested herein.  
Petition #542-03 – Modify and approve as suggested herein.***

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The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

## I. BACKGROUND

As noted in the Planning Department memorandum regarding prior petition #297-03, rear lots have been revisited at various times by the Board of Aldermen ("Board"). Most recently, petition #297-03 proposing to delete rear lots was heard on September 22, 2003, approved in Working Session, then denied by the full Board on December 1, 2003. However, it was understood that rear lots would be taken up again following the convening of the new (now current) Board of Aldermen in 2004. Petition #225-01(3) reflects continued development of issues which were discussed pertaining to the mitigation of potential impacts arising from rear lot subdivisions as well as whether a public benefit requirement should be established. In addition petition #542-03 proposes to amend the City's Zoning Ordinance by inserting a requirement which would limit the creation of rear lot subdivisions to certain prescribed situations meeting pre-conditions pertaining either to providing an alternate to an existing standard subdivision or to providing affordable housing.

## II. EXISTING ORDINANCE AND PROPOSED AMENDMENTS

The changes proposed by these petitions would affect Section 30-15(b)(4).

*CURRENT TEXT, SECTION 30-15(b)(4):*

*"In the case of a rear lot not having the required frontage on a street, the required lot frontage may be measured along the rear line of the lot or lots in front of it with the permission of the board of aldermen in accordance with the procedure provided in Section 30-24."*

In addition, various parts of Section 30-24(f), *Inclusionary Zoning Ordinance* need to be reviewed for possible revisions should Board approve the requirement that one or more affordable units be provided as a condition of granting a special permit for a rear lot subdivision. This ordinance was significantly amended and adopted in its current form in April 2003.

While adoption of the subject petitions would necessitate amendment of the Zoning Ordinance at multiple parts, the petitions do not include any proposed specific language changes at this time. Petition # 225-01(3) seeks to add "a new section" addressing mitigation and public benefit components while petition # 542-03 proposes qualifying preconditions be added for rear lot subdivisions.

As currently proposed, neither amendment distinguishes between residential and non-residential uses and appears to apply in all zoning districts.

## III. OVERVIEW OF REAR LOT ORDINANCE AND AMENDMENTS PREVIOUSLY PROPOSED

At the time of adoption of the City's Zoning Ordinance in 1922, there were no requirements for frontage for any lots. However, in 1940, amendments were adopted which established lot width and also allowed "as of right" the measurement of lot width (frontage) for back lots along the rear of adjacent front lots (or along the setback). In 1951, the provision pertaining to measuring frontage for rear lots was further modified replacing the "as of right" provision with a requirement for a special permit pursuant to

Section 30-24, as currently stated in Section 30-15(b)(4). This requirement has remained unchanged to the present.

In 1990, at the request of the Board of Aldermen, the Planning Department prepared a study of rear lot subdivisions and suggested a number of guidelines useful in the evaluation of rear lot subdivision proposals. At that time, it was also noted that the pace of rear lot subdivisions was approximately 1-2/year. In 1991, the City Engineer sought to establish a 20 ft. frontage requirement (Petition #39-91) for access purposes. In addition, the City Engineer felt that it was necessary to make this provision of the Newton Zoning Ordinance consistent with the requirements of MGL c.41, ss81K to 81-GG of the Subdivision Control Law, a view not shared by the City's Law Department. Petition #39-91 was withdrawn pending further study.

Subsequently in 1994, several Aldermen submitted Petition # 20-94 seeking to add new requirements for rear lot subdivisions, including increasing the lot area, establishing larger minimum rear and side yard setbacks, excluding the access way from measurement of lot area, and establishing a 20 ft. width requirement for an access way. Following extensive discussion and consideration of various modifications, Petition #20-94 was denied by the full Board. The Planning Department in its memorandum dated June 27, 1994 noted a number of benefits and disadvantages of rear lots and recommended that guidelines be utilized by the Board as part of the special permit process for the review and evaluation of rear lot subdivision proposals.

In 2001 petition #225-01 proposing an amendment requiring that all rear lot subdivisions have 20 ft. frontage upon a way was considered by the Board of Aldermen, then recommitted to the Zoning and Planning Committee. Although the item was approved as amended by the Zoning and Planning Committee, when taken up by the full Board on December 17, 2001, it was voted "no action necessary".

During fall 2003, Petition #297-03 was proposed, eliminating rear lots altogether, and was approved by the Zoning and Planning Committee by vote of 3-2-2. Meeting notes indicate that a plurality of the Committee viewed this item as constituting a de facto moratorium on rear lots and providing an incentive to develop a revised improved ordinance. The intent of such a revised ordinance would be to require a public benefit and mitigation of adverse impacts as a condition of issuing a special permit for rear lot development. A successor petition #225-01(3), which is the subject of this memorandum was then created and referred to the 2004-05 Board of Aldermen. Petition #297-03 was subsequently denied by the full Board on December 1, 2003.

When reviewing petition #297-03, the Planning Department proposed that the Board adopt a two-tier approach:

- "As-of-right" development for rear lots meeting new, more stringent dimensional controls; and
- Special permit/site plan approval for rear lot development, which would benefit from adjustments to setback and/or building height dimensions, and for common driveway arrangements.

In addition, the Planning Department suggested exploring an optional affordable housing provision, whereby an affordable unit providing a public benefit would be required as a condition of special permit in situations where a new duplex is created.

#### IV. REAR LOT DEVELOPMENT

During the period from approximately 1991-2003, the Board of Aldermen approved 13 special permits for rear lot subdivisions, with a maximum of three permits granted in one year, but also including several years without any such permits. On average, 1 permit per year was approved during this 13-year period. In 2003, one rear lot subdivision was approved on September 2, 2003 for 294 Kenrick Street, and another rear lot subdivision requested for 11 Williston Road (Pet. #130-03) was denied. As a result, during this period, 21 units were approved, which were distributed across ten of Newton's villages, as reflected in the following table.

<b>Units in approved rear lots by village and type</b>				
	<b>1F</b>	<b>2F</b>	<b>Att Du</b>	<b>Totals</b>
Auburndale*	1			1
Chestnut Hill	1			1
Lower Falls	1			1
Newtonville			6	6
Newton Centre	1			1
Nonantum		2		2
Oak Hill	2			2
Upper Falls	1	2		3
Waban	1			1
West Newton	1	2		3
<b>Totals</b>	<b>9</b>	<b>6</b>	<b>6</b>	<b>21</b>

\*Note: Approved subdivision not implemented.

As part of the build-out analysis prepared for the Comprehensive Planning Advisory Committee, the Planning Department developed an updated estimate of the maximum hypothetical number of rear lots which might be created given certain assumptions as to lot size, frontage, available access, and adjustment for other development options. While the current maximum estimate is 178 lots, this figure does not reflect site conditions such as wetlands, ledge, steep sites, streams, rivers, placement of existing structures, lot configuration, etc., nor market factors particular to each site. It is anticipated that only about 10% of these lots might be developed by 2020, or about 1.1 rear lots per year, a rate consistent with the pace of rear lot development experienced during 1991-2003.

The slow rate of rear lot development suggests that rear lot subdivisions are not a major issue. Nevertheless, on a case by case basis, some rear lot subdivisions may appear controversial when previously secluded back yard areas become developed and an increase in residential activity occurs, or when plans insensitive to adjacent residents are implemented.

#### V. ANALYSIS

**Petition # 225-01(3)** - proposing a new section of Chapter 30 of the City of Newton Zoning Ordinances governing rear lot subdivisions that would require explicit findings of

specific public benefits and standards for mitigation of impacts that must be met before a special permit for this purpose could be granted.

#### Findings of specific public benefits

Section 30-24, *Special Permits*, paragraph (d) sets for the criteria for granting a special permit. These begin with the general requirement that the public convenience and welfare be served subject to conditions and safeguards the Board may impose. In addition, four specific criteria are enumerated as follows:

- 1) *The specific site is an appropriate location for such use, structure;*
- 2) *The use developed and operated will not adversely affect the neighborhood;*
- 3) *There will be no nuisance or serious hazard to vehicles or pedestrians; and*
- 4) *Access to the site over streets is appropriate for the type(s) and number(s) of vehicles involved.*

While the petition seeks to add the measure requiring a finding of “specific public benefits” to the Zoning Ordinance in relation to the approval of rear lot subdivisions, this term requires further definition. One type of public benefit might be affordable housing, as contemplated in petition #542-03 and as defined in Section 30-24(f), *Inclusionary Housing Ordinance*. Another public benefit might be the set-aside of land as permanent open space for recreation or conservation use accessible to the public. Yet another benefit in the case of a historic property, might be the preservation of the front structure to enhance the streetscape while allowing the development of a new rear lot. In the case of multiple public benefit options, it will be necessary to develop a workable selection mechanism to facilitate designation of the most appropriate benefit while also ensuring that the affordable housing benefit is duly considered. The Planning Department defers to the Law Department as to the legal “fit” of such a “public benefit” measure and its appropriateness in the context of the current zoning statute.

#### Standards for mitigation of impacts

With respect to mitigation, it is noted that the Planning Department in its two most recent memoranda on rear lots proposed several mechanisms to tighten the rear lot subdivision provisions and facilitate better management of rear lot subdivision creation and development. Primarily these suggestions involve the establishment of more demanding dimensional controls applicable “up front” to determine whether a site is suitable for rear lot subdivision and development. These included:

1. Increase side and rear yards by 50% to enhance buffering;
2. Increase minimum lot area requirement in proportion to increased side and rear yards (see following table);

Increased lot areas with expanded side and rear yard setbacks			
	SR-1	SR-2	SR-3
Current min. lot area (new)	25,000 sq. ft.	15,000 sq. ft.	10,000 sq. ft.
With 50% increase in side & rear yards	29,200 sq. ft.	16,950 sq. ft.	11,400 sq. ft.

Note: the above reflects an approximately 14% increase in lot area, corresponding to a 50% increase in side and rear yards. Figures are rounded approximations, based on square lots initially meeting the “new” lot minimum lot area in each zone.

3. Require minimum access “frontage” for vehicular circulation and fire access consistent with existing driveway standards of 12 ft. plus 4 ft. buffer each side, totaling 20 ft. (Remainder of required frontage may be measured along rear of front lot.);
4. Limit the amount of area within the “access drive” portion that may be included in calculating the overall minimum lot area to 20% of the required lot area;
5. Maintain front setbacks, as provided in Section 30-15, Table 1 (But also provide a “building separation” factor by special permit);
6. Cap FAR at levels consistent with existing minimum lot area requirements (This will require a corresponding reduction of FAR in relation to rear lots due to the proposed larger lot requirement);
7. Cap building coverage at levels consistent with existing minimum lot area requirements (This will require a corresponding reduction in the maximum building lot coverage percentage in relation to rear lots due to the proposed larger lot requirement);
8. Maintain minimum open space percentages, as per Section 30-15, Table 1;
9. Maintain maximum number of stories at 2.5 stories, as per Section 30-15, Table 1;
10. Establish maximum building height at average building height of abutting properties or at existing maximum building height of 30 ft., whichever is less; and
11. Require submission of architectural plans, a landscape plan, and site plan as part of all rear lot permitting procedures, all stamped and signed by registered professionals.

These are illustrated in the attachments entitled *Attachment A - Proposed Standards for Rear Lots – Single Residence 1*; *Attachment B - Proposed Standards for Rear Lots – Single Residence 2*; and *Attachment C - Proposed Standards for Rear Lots – Single Residence 3*.

The implementation of such “up front” requirements should screen out unsuitable sites, while ensuring that sites that meet these standards will have “built in” the mitigation factors to lessen impacts on abutters and neighbors. While the Planning Department continues to believe that sites meeting these more stringent standards can be processed and approved “as of right,” the standards may also serve as part of a special permit review process to determine suitability for rear lot development.

Additional provisions suggested for the special permit track include the following:

- Adjustment (waiver) of front setback, utilizing building separation option at 2x expanded rear yard in place of front setback (Maintain minimum distance from lot line at same distance as expanded side yard);
- Adjustment (waiver) of average building height requirement up to 30 ft.;

- Common driveway arrangements to reduce needless and extended paved areas;
- Driveway easements (meeting access requirements) for landlocked rear lots;
- Affordable housing unit(s); and
- Non-housing public benefits (open space; historic preservation; other).

As suggested in the memorandum dated November 10, 2003, provided by Philip Herr, Chairman of the Comprehensive Planing Advisory Committee (See *Attachment D*), another approach is to enumerate selected additional “general” dimensional standards for rear lots such as a greater minimum lot size as percent of standard lot size, minimum developable area based on square of frontage, and increased side setbacks based on rear yard dimensions, while retaining other existing Table 1 dimensional controls. This supports a two-track solution where rear lots meeting the combination of more restrictive general requirements together with existing dimensional controls and also providing an affordable housing unit may be developed as of right. In turn, the special permit process is utilized for sites with lesser lot area or for cases not providing an affordable housing unit. This approach has the benefit of simplifying applicable dimensional standards and also providing for a special permit type process when triggered by predetermined considerations. However, certain aspects such as the suggested rear lot minimum lot area set at 150% of lot area otherwise required, and developable area measured as a square of the frontage otherwise required would need further review to determine workability in the context of Newton rear lots having irregular configurations.

## **VI. RECOMMENDATION - *Petition #225-01(3)***

Rear lot development has a long history in the City and beginning in 1940, changes to the Zoning Ordinance were adopted instituting frontage requirements. While originally available as of right, at present all rear lot subdivisions are subject to the special permit process. Also, there is currently no provision linking approval of rear lot development with the provision of a defined public benefit. Inclusion of such a measure would add a new feature to the rear lot zoning regulations, with the potential of generating one or more types of public benefit.

The Planning Department believes that with the adoption and implementation of additional standards, rear lot development can be better guided to mitigate potentially negative effects utilizing an as of right procedure along with the special permit process. It is possible to incorporate such standards by explicitly establishing new dimensional controls, either as part of Section 30-15, Table 1, by a separate section and table(s), or by combination of new “general” dimensional requirements together with existing controls. The Planning Department suggests that the last option be further explored and considered for implementation.

The Planning Department continues to suggest two tracks be established for review and approval of rear lot projects:

Track 1: “as-of-right” - to expedite standard cases, and

Track 2: special permit - to address more complex cases involving adjustments to standard requirements and determining/implementing an appropriate public benefit.

The following approach is recommended:

- Define “public benefits” (and mechanism for selection of an appropriate benefit) to be applied as a condition for grant of special permit for rear lot development. (Would not apply to as of right rear lot development)
- Coordinate the rear lot affordable housing benefit with Section 30-24(f). Apply as part of special permit process in cases where a two-family home is developed. (Three-unit development under special permit is already covered by 30-24(f)).
- Review, refine and develop a workable combination of “general” and Table 1 standard requirements applicable to all rear lots.
- Review and refine provisions (adjustments, waivers, common driveways, public benefits etc.), which may be addressed as part of special permit process.

### **Ordinance changes:**

It is anticipated that the above recommendation will necessitate changes in Section 30-15(b)(4), Section 30-15, Table 1 and in Section 30-24(f). If the Board concurs, the Law Department will be requested to consider such ordinance amendments as would be needed to execute the above recommendation on two tracks:

#### **“As of right”**

- To implement an “as of right” procedure for rear lots meeting the new rear lot standards.
- Require submission of architectural plans, a landscape plan, and site plan as part of rear lot permitting procedure, all stamped and signed by registered professionals.

#### **Special permit**

- Provide for waiver of front setback, utilizing building separation option at 2 x expanded rear yard in place of front setback. Maintain minimum distance from lot line at same distance as expanded side yard.
- Provide for waiver of average building height requirement up to 30 ft.
- Provide for review and approval of common driveway arrangements.
- Provide for driveway easements to landlocked rear lots in place of access strip.
- Provide for review, selection, and mandating of a defined public benefit such as affordable housing unit(s), open space, and/or historic structure preservation.

## **VI. ANALYSIS**

**Petition #542-03** requests amendment to Chapter 30 of the City of Newton Zoning Ordinances to allow “rear lot subdivisions” by special permit only in cases where a) an as-of-right subdivision plan exists as an alternative, or b) one or more units of affordable housing will be provided.

At present, the Zoning Ordinance provides for rear lot subdivisions subject to the grant of a special permit. Review of site plans for rear lot subdivisions approved by the Board to date indicate a variety of configurations and approaches, reflecting development solutions working with untypical lot sizes and shapes and sometimes challenging topographical conditions. The subject petition seeks to limit rear lot subdivisions to the following two cases only:



1. As an alternative to a case where an as-of-right subdivision plan exists; and
2. Where one or more affordable housing units are provided.

The first condition would in effect operate to allow rear lot subdivisions only when a less desirable scenario in the form of a standard subdivision development is present. In such case, changing to a rear lot alternative, which is not subject to the more extensive subdivision roadway and dimensional requirements, - would enable a more flexible development while reducing paved areas. However, this approach would also increase the necessary minimum site area significantly in order to accommodate a standard subdivision. The smallest such subdivision (est. 3 lots plus roadway) would require approximately a 40,000 sq. ft. site in an SR-3 or in a Multi Residence zone, a 60,000 sq. ft. site in an SR-2 zone, and a 100,000 sq. ft. site in an SR-1 zone. This compares with the average typical site area of approximately 21, 000 sq. ft. based on rear lots approved during 1991-2003 located in single and multi residence zones. It is also unclear whether developers would have sufficient incentive to incur survey and engineering expenses for designing a standard subdivision layout intended solely as a “qualifying” step to gain the option of a rear lot subdivision, which would require another and different set of survey and engineering plans for the same property. In addition, imposing the subject standard subdivision requirement would likely preclude the development of rear lots, which might accommodate several attached dwelling units, but would not have the configuration or size for a standard subdivision. Consequently, it may be anticipated that the overall result would be to significantly decrease the development of rear lots under this provision.

With regard to the proposed affordable housing condition, it is noted that only three of 13 cases requested development of two-family dwellings, while one development requested 6 attached dwelling units. The remaining 9 sites were single-family developments. Assuming that a developer would wish to retain at least one market rate unit while designating the other for affordable housing, this might hypothetically have produced three affordable units. However, at present such units are not covered by Section 30-24(f) *Inclusionary Zoning*, which is triggered only whenever a development of 3 or more units is proposed and requires a special permit. As a result, rear lot development (or any other development) with three or more units is currently covered by the Section 30-24(f). The proposed affordable housing condition would lower the threshold to two units in the case of rear lots.

The City’s current Inclusionary Zoning Ordinance requires that 15% of total units be designated for affordable housing. The provisions also define the income levels and affordable housing programs that apply, as well as the optional cash payment provisions available to satisfy the affordable housing requirement. It is noted that the above-referenced 6 attached dwelling unit development met the affordable housing requirement through a cash payment pursuant to the prior version of the Inclusionary Zoning Ordinance. Under the amended (current) ordinance, a cash payment option continues to be available for developments of 3-6 units, and would be extended to rear lot duplexes in the event the rear lot affordable housing requirement is approved.

It is anticipated that a number of rear lot subdivisions will come under the rear lot special permit process. In these cases, it would be appropriate to require one affordable housing unit or affordable housing cash contribution per Section 30-24(f) as a condition of the special permit where a new duplex is created (also see discussion under petition #225-

01(3), above). In effect, this would require an applicant to provide a *public benefit* to the City in return for a special permit to build a two-family dwelling (consistent with the underlying zoning) on the rear lot. The affordability requirements already available within the inclusionary zoning provisions would need to be adjusted, as appropriate, to operate in conjunction with a rear lot special permit.

VI. **RECOMMENDATION** - *Petition #542-03*

The Planning Department believes the precondition of a standard subdivision to be too cumbersome and unworkable, unduly decreasing the opportunities for rear lot development. However, the option of requiring an affordable housing unit to provide a public benefit as a condition of a rear lot special permit merits consideration. Given the significant challenges to the production of affordable housing in Newton, it is suggested that attention be given to a positive rather than a restrictive approach so as to encourage affordable housing in combination with rear lot development.

The following approach is recommended:

- Decline the precondition of a standard subdivision as requirement prior to consideration of rear lot subdivision as an alternative; and
- Coordinate the rear lot affordable housing benefit with Section 30-24(f). Apply as part of special permit process in cases where a two-family home is developed. (Three-unit development under special permit is already covered by 30-24(f)).

**Ordinance changes:**

It is anticipated that the above recommendation will necessitate changes in Section 30-15(b)(4) and in Section 30-24(f). If the Board concurs, the Law Department will be requested to consider such ordinance amendments as would be needed to execute the above recommendation as follows:

**Special permit**

- Provide for the review and mandating of a defined affordable housing public benefit as part of the rear lot special permit process.

**ATTACHMENTS:**

Attachment A - Proposed Standards for Rear Lots – Single Residence 1

Attachment B - Proposed Standards for Rear Lots – Single Residence 2

Attachment C - Proposed Standards for Rear Lots – Single Residence 3

Attachment D - Memorandum from Philip Herr, dated November 10, 2003, Re: Petition #297-03 re Rear Lots